

DARIN SNYDER (S.B. #136003)
dsnyder@omm.com
DAVID SEPANIK (S.B. #221527)
dsepanik@omm.com
O'MELVENY & MYERS LLP
Two Embarcadero Center, 28th Floor
San Francisco, California 94111-3823
Telephone: (415) 984-8700
Facsimile: (415) 984-8701

Attorneys for Plaintiff
ARTIFEX SOFTWARE, INC.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO

ARTIFEX SOFTWARE, INC.,

Plaintiff,

v.

BIGTINCAN HOLDINGS PTY. LTD.,

Defendant.

Case No.

COMPLAINT FOR
1. COPYRIGHT INFRINGEMENT
2. MISAPPROPRIATION OF TRADE
SECRETS

DEMAND FOR JURY TRIAL

Plaintiff Artifex Software, Inc. ("Artifex") for its Complaint against Defendant BigTinCan Holdings Pty. Ltd. ("BTC") alleges and avers as follows:

INTRODUCTION

1. Artifex is the owner of SmartOffice, a leading Microsoft Office mobile application that enables users to view, edit, create, share, and print Microsoft Word, PowerPoint and Excel Files. BTC is engaged in the unauthorized and unlawful use and distribution of the intellectual property underlying SmartOffice, the "Picsel IP," to third parties for profit through its competing mobile application "bigtincan hub."

2. BTC previously held a limited license for certain uses of the Picsel IP, but BTC has since violated the requirements of that license by distributing its product in direct competition

1 with Artifex's SmartOffice. Despite this fact, BTC continues to blatantly distribute its "bigtin can
2 hub" product even though the product unlawfully utilizes Artifex's copyright-protected
3 intellectual property and trade secrets. Worst still, BTC is distributing its unauthorized and
4 unlawful product that directly competes with Artifex's SmartOffice at a pricing differential that
5 unjustly restricts Artifex from realizing the value of its intellectual property and trade secrets.

6 3. Artifex demanded that BTC cease its improper distribution of its infringing and
7 unlawful product, but BTC refused to comply, leaving Artifex no choice but to seek relief from
8 this Court.

9 NATURE OF THE CASE

10 4. This action seeks to enjoin BTC from its unauthorized and unlawful use of
11 Artifex's copyrights and trade secrets. BTC is distributing its mobile application utilizing
12 Artifex's unlicensed copyright-protected intellectual property and trade secrets.

13 5. Artifex seeks preliminary and permanent injunctive relief and damages under the
14 laws of the United States and the State of California.

15 PARTIES

16 6. Plaintiff Artifex is a California corporation with its principal place of business at 7
17 Mt. Lassen Drive, A-134, San Rafael, California.

18 7. Defendant BTC is an Australian propriety limited company with its global
19 headquarters located at 404 Wyman Street, Suite 205, Waltham, Massachusetts. On information
20 and belief, BTC does business in California and offers and distributes its infringing product in
21 California through the Internet, at least through California-based Apple Inc.'s App Store and
22 Google Inc.'s Google Play.

23 JURISDICTION AND VENUE

24 8. Artifex's action for copyright infringement arises under the Copyright Act of
25 1976, 17 U.S.C. § 101 *et seq.* Artifex also brings a related state law claim for Misappropriation
26 of Trade Secrets.

27 9. This Court has original subject matter jurisdiction of this action under 28 U.S.C.
28 §§ 1331, 1338(a) and (b), and this Court has supplemental jurisdiction under 28 U.S.C. § 1367.

1 liquidation and administration of those defunct companies.

2 15. Among the assets acquired by Artifex during this liquidation are the source code,
3 business intellectual property, and existing licenses of SmartOffice (the “Picsel IP”).

4 16. Computer programs such as SmartOffice are written by programmers in a form
5 known as “source code.” Source code can be understood by humans but cannot be executed
6 directly by a computer. Source code is later transformed into “executable” code that can be run
7 on a computer, also known as “object code.” A copy of the executable program contains only
8 object code, and the source code for the program cannot be derived from this object code.
9 Modifications to computer programs, including SmartOffice, must be completed by altering the
10 source code, and they cannot be completed by altering the object code directly.

11 17. Artifex’s business is based on the revenues derived from selling and licensing
12 software programs for which it holds the IP rights, including SmartOffice. Artifex offers the
13 SmartOffice application to the public via licensing and distribution agreements, but it does not
14 license or distribute the SmartOffice source code. Artifex also offers and sells SmartOffice to the
15 public through Apple Inc.’s App Store and Google Inc.’s Google Play.

16 18. Artifex filed an application for registration of the SmartOffice source code with
17 the United States Copyright Office on November 19, 2014 and received a notice of receipt from
18 the Office that same day.

19 **BTC’s Limited Licensing of Picsel IP**

20 19. BTC acquired a license from the UK Liquidators of SmartOffice Ltd. that granted
21 BTC limited rights in SmartOffice, including the right to use, make, market, sell, license, modify,
22 and distribute SmartOffice in executable code form.

23 20. BTC entered into a Licensing Agreement that delineated the specific, and limited,
24 permissible uses of the Picsel IP (“Agreement”).

25 21. As part of the Agreement, as provided for in Paragraph 3.2, BTC was provided
26 with the SmartOffice “source code necessary for it to exploit the rights granted to it” under the
27 Agreement.

28 22. The Agreement in Paragraph 3.1 limited BTC’s use of the Picsel IP to the Field of

1 Use as defined in Paragraph 1.1 as use in “[BTC] products, present and future that do not compete
2 directly with existing consumer App Store products and enterprise products.”

3 23. The Agreement additionally required that BTC “keep secret and confidential at all
4 times . . . all Confidential Information,” and it prohibited BTC from “us[ing] or disclos[ing] to
5 any third party any such Confidential Information unless for the proper purposes of this
6 Agreement, or having obtained the other party’s prior written consent.” “Confidential
7 Information” was defined in Paragraph 1.1. of the Agreement as “all information relating to the
8 Picsel IP.”

9 24. BTC’s rights under the limited license are contingent on its continued compliance
10 with the Field of Use restriction, which prevents BTC from using the Picsel IP in a product that
11 competes directly with SmartOffice.

12 **BTC’s Improper Use of the Picsel IP**

13 25. Since at least August 27, 2014, BTC has distributed its “bigtincan hub” product,
14 which BTC has touted publicly as using and containing Picsel IP, through Apple Inc.’s App Store
15 and Google Inc.’s Google Play.

16 26. BTC’s “bigtincan hub” competes directly with SmartOffice by offering
17 functionality and features identical to those offered by SmartOffice through the same
18 marketplaces.

19 27. By competing directly against SmartOffice with a product that BTC touts as using
20 and containing Picsel IP, BTC has violated the Field of Use restriction upon which its limited
21 license to the Picsel IP was contingent. As such, BTC’s continued use of and profit from use of
22 the Picsel IP, including Artifex’s copyright-protected intellectual property and trade secrets, is
23 unlicensed and unlawful.

24 28. BTC’s past and continuing violations of Artifex’s intellectual property rights
25 constitute substantial, irreparable harm to Artifex.

26 **FIRST CLAIM FOR RELIEF**

27 **COPYRIGHT INFRINGEMENT**

28 **(17 U.S.C. § 101 *et seq.*)**

Artifex's source code therefore constitutes and comprises "trade secrets" under applicable law.

36. The Agreement restricted BTC's use of the trade secrets in the Píscel IP, including the SmartOffice source code, to the specific rights granted under the Agreement. Because BTC's product "bigtincan hub" utilizes the Píscel IP to compete with SmartOffice in violation of the Field of Use of the Agreement, any continued use of the trade secrets is beyond the scope of the limited license granted to BTC under the Agreement.

37. BTC wilfully and maliciously misappropriated Artifex's trade secrets by creating, distributing, and/or licensing its product "bigtincan hub" created using the proprietary SmartOffice source code, which was communicated to BTC in the context of a limited licensing agreement, in violation of the contingent conditions of the license grant.

38. Artifex is entitled to recover from BTC the damages sustained as a result of the misappropriation alleged here. The amount of such damages cannot be determined at this time but will be proven at trial.

39. Artifex is informed and believes that BTC's acts of misappropriation were both willful and malicious, meriting the imposition of punitive damages.

40. Artifex is informed and believes that BTC is continuing and will continue to misappropriate Artifex's trade secrets. By reason of that ongoing misappropriation, Artifex will suffer severe and irreparable harm and damages, and it will be without an adequate remedy at law. Artifex is therefore entitled to an injunction restraining BTC, its officers, agents, employees, assigns and all persons acting in concert with them and any person or entity acting in concert with them, from misappropriating Artifex's trade secrets.

PRAYER FOR RELIEF

Artifex prays for judgment against BTC as follows:

1. For permanent injunctive relief, including an order restraining and enjoining BTC from further infringement of Artifex's copyright and misappropriation of Artifex's trade secrets, specifically:

a. that BTC, as well as any successor entities, its directors and officers, agents, servants, employees, assigns, and all other persons acting in active

1 concert or privity or in participation with them, and each of them, be
2 enjoined from continuing to market, offer, sell, dispose of, license, lease,
3 transfer, display, advertise, reproduce, develop or manufacture any version
4 of SmartOffice, including those previously licensed to BTC, and any works
5 derived or copied from any such version of SmartOffice, or to participate
6 or assist in any such activity;

- 7 b. that BTC, as well as any successor entities, its directors and officers,
8 agents, servants, employees, assigns, and all other persons acting in active
9 concert or privity or in participation with them, be enjoined from directly
10 or indirectly infringing Artifex's copyright in SmartOffice;
- 11 c. that BTC, as well as any successor entities, its directors and officers,
12 agents, servants, employees, assigns, and all other persons acting in active
13 concert or privity or in participation with them, be enjoined from
14 misappropriating Artifex's trade secrets with relation to SmartOffice or any
15 other Picsel IP;
- 16 d. that BTC, as well as any successor entities, its directors and officers,
17 agents, servants, employees, assigns, and all other persons acting in active
18 concert or privity or in participation with them, be enjoined to return to
19 Artifex any originals, copies, facsimiles, or duplicates of any version of
20 SmartOffice licensed to BTC under the Agreement, any works derived or
21 copied from any such version of SmartOffice in their possession, custody,
22 or control that are shown by the evidence to infringe any Artifex copyright;
- 23 e. that BTC be enjoined to deliver upon oath, to be impounded during the
24 pendency of this action, and for destruction pursuant to judgment herein,
25 all originals, copies, facsimiles, or duplicates of any version of SmartOffice
26 licensed to BTC under the Agreement, any works derived or copied from
27 any such version of SmartOffice in their possession, custody, or control
28 that are shown by the evidence to infringe any Artifex copyright;

2. For compensatory damages against BTC, including any consequential or statutory damages, in an amount to be determined at trial;
3. For exemplary and punitive damages;
4. For attorneys' fees and costs of suit incurred herein;
5. For the value of BTC's unjust enrichment, including all gains, profits, or advantages attributable to defendants' wrongful acts alleged herein;
6. That the Court grant such other, further, and different relief as the Court deems appropriate.

Dated: December 11, 2014

DARIN SNYDER
DAVID SEPANIK
O'MELVENY & MYERS LLP

By: /s/ Darin W. Snyder
Darin Snyder
Attorneys for Plaintiff
Artifex Software, Inc.